

Email from Greg Russell (WO SOL)

Turning to your immediate question, off the top of my head I have a few thoughts. IM 2019-018 is just a policy, as you point out, not a law or regulation. For hardrock mining operations, I think the legal authority would go something like this: section 302 of FLPMA directs the Secretary to prevent UUD. Through the 3809 regulations, the BLM describes how it will prevent UUD in the context of hardrock mining. Those regulations describe how UUD occurs when an operator fails to comply with (a) the performance standards in section 3809.420; (b) terms and conditions of an approved plan of operations; or (c) state laws related to environmental protection and protection of cultural resources. 43 C.F.R. § 3809.5.

- Among the performance standards in 3809.420 is a requirement to conduct operations in a manner that complies with all pertinent state laws. *Id.* § 3809.420(a)(6).
- I'm not too familiar with standard terms and conditions for a plan of operations, but in other contexts (e.g., for rights-of-way), I know that BLM terms and conditions typically require public land users to comply with applicable state laws.
- And the third point—compliance with state laws related to environmental protection—speaks for itself on this point.

“Compliance with applicable state law” is a concept that also pops up in other places in the 3809 regulations (e.g., in section 3809.3, which acknowledges that if the state law or regulation requires a higher standard of protection for public lands, then there's no conflict with subpart 3809), and possibly in other applicable laws or regulations.

Since the BLM isn't in the business of interpreting or applying state law, it makes sense for the BLM (even in a pre-authorization posture) to point operators to state agencies, who can clarify what state law requires.

I'm looping Kendra and Nancy because they likely have additional thoughts. I know we've previously advised others in BLM NV on this issue, and I might be confusing things or overlooking other sources of law or regulation (or both!).

Email from Kendra (WO SOL)

Hi folks, I only have a couple of small points to add to Greg's email:

BLM's use and occupancy regulations at 43 CFR 3715.5(b) also have a requirement to conform to all applicable federal and state environmental standards and require operators to get all applicable permits before beginning occupancy.

BLM's rules of conduct regulations at 43 CFR 8365.1-7 state specifically that state and local laws and ordinances shall be enforced by the appropriate state and local authorities.

The requirement to comply with all applicable state and federal laws is something that has always been in 3809 (the previous reg was 3809.2-2).